

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5311 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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G.S.R.T. CORPORATION

Versus

JESANGBHAI K. DABHI

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Appearance:

MR HARDIK C.RAWAL for Petitioner

MR DJ BHATT for Respondent No. 1

MR MUKESH A PATEL,AGP for Respondent No.2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. Challenge has been made by the petitioner Gujarat State Road Transport Corporation to the order of the Conciliation Officer, Ahmedabad dated 24.10.1985 Annexure-C under which he has declined to approve the action of the petitioner, dismissing the respondent No.1 from the services.

2. Learned counsel for petitioner contended that, merely because the respondent - workman has not been paid Line Allowance and House Rent Allowance, the Conciliation Officer has found fault with action of the petitioner which is not correct.

3. It has next been contended that the second ground given for rejection of the application of the petitioner is also equally arbitrary. It is not the case of the respondent - workman that the departmental inquiry is not held in this case. He further submits that, from reading of the order of the Conciliation Officer, it is explicitly clear that the departmental inquiry is conducted in this case and only grievance has been made by the respondent workman that the papers of the departmental inquiry were not supplied to him.

4. Mr. Bhatt learned counsel for the respondent workman fairly submits that, affirmatively it is difficult for him to say whether in this case the departmental inquiry is conducted against the respondent - workman or not by the petitioner. However, he further submits that, even if it is taken that the departmental inquiry was held against the respondent - workman, it was obligatory or what he states it was a legal obligation of the petitioner to produce the record of the departmental inquiry before the authority concerned. Whether it was fair and reasonable the burden was on the petitioner to establish the same and this has not been done in the present case. Before deciding the application filed by the Management under section 33(2)(b) of the Industrial Disputes Act, 1947, the Conciliation Officer has to satisfy on all three points, namely, (1) One month pay was given, (2) Simultaneously the application has also been filed in the Labour Court and (3) To prove that the departmental inquiry conducted against the respondent workman is fair and reasonable and then only it can be granted.

5. Lastly, it is contended that, the charge against the respondent - workman was to remain absent from duty without prior sanction of the leave and on which penalty of dismissal ordered by the petitioner is not justified. It is disproportionate to the misconduct as alleged against the respondent- workman.

6. Mr. Mukesh A. Patel, AGP appearing for the respondent No.2 contended that it is not the case where the departmental inquiry is not held against the respondent - workman, but only grievance that the inquiry

papers were not given to him is made by him before the lower authority.

7. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

8. Learned counsel for the petitioner does not dispute that, misconduct alleged against the respondent workman was only of leaving absent from duties without prior sanction of leave. I proceed with the fact that in this case departmental inquiry was held against the respondent-workman for misconduct alleged against him. Leaving apart the point that merely because House Rent Allowance and Line Allowance was not given to the respondent - workman, the Conciliation Officer, Ahmedabad could have declined to grant approval to the action of the Corporation, dismissing the respondent-workman from services on the ground that the petitioner has not produced before the authority the record of the departmental inquiry and further not proved that it was reasonable and fairly conducted. The order impugned in this Special Civil Application does not call for any interference of this Court only on the ground that the Corporation has not produced the inquiry proceedings before the Labour Court and as a result thereof it is not established that the inquiry conducted by it, was fair and reasonable. From the order of the Conciliation Officer, Ahmedabad, I find that the respondent - workman has made the grievance before the said authority that the inquiry was not fair and reasonable. Burden of proof that the inquiry was fair and reasonable, with the Corporation and in this case it has not been discharged. Only on this ground, this petition deserves to be dismissed and accordingly the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote,J.)

(pathan)